

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE**

In the Matter of the Residential Building
Contractor License of Ray D. Hostetler,
individually and doing business as R.D.
& Associates

**FINDINGS OF FACT, CONCLUSIONS,
AND RECOMMENDATION**

This matter came on for a Prehearing Conference before Administrative Law Judge Steve M. Mihalchick at 2:30 p.m. on November 29, 2004 at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. Christopher M. Kaisershot, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared for the Department of Commerce. No one appeared for Respondent, nor did Respondent contact the Administrative Law Judge to request a continuance of this matter.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Under Minn. Stat. § 14.61, the Commissioner shall not make a final decision until this Report has been made available to the parties for at least ten days. The parties may file exceptions to this Report and the Commissioner must consider the exceptions in making a final decision. Parties should contact the Commissioner at the address above to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

STATEMENT OF ISSUES

1. Did Respondent breach a contract so as to cause injury or harm to the public in violation of Minn. Stat. § 326.91, subd. 1(4), by failing to deliver and install a storm door on James Hunter's home, despite receiving full payment and stating in writing that it would be installed within 6-7 weeks?

2. Did Respondent fail to provide the Department with written notice of changes to his home and business addresses within 15 days, in violation of Minn. Stat. §§ 326.875, and 326.91, subd. 1(5)?

3. Has Respondent shown himself to be incompetent, untrustworthy and financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6), by repeatedly misrepresenting to Mr. Hunter that the storm door would be delivered and installed or that his money would be refunded?

4. Did Respondent violate Minn. Stat. § 45.027, subd. 1(a), by failing to appear as ordered before the Commissioner's representative on June 27, 2004, and July 7, 2004.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On October 8, 2004, the Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges in this matter was served by first class mail upon Ray D. Hostetler, 6524 West Broadway Avenue, Brooklyn Park, MN 55428; 5808 – 80th Avenue North, Brooklyn Park, MN 55443; and 1120 – 5th Avenue South, Anoka, MN 55303, the last known three home and business addresses on file with the Department. It notified Respondent of the prehearing conference scheduled for November 16, 2004. Two of the three mailings were returned to the Department. By letter dated October 12, 2004, the Department re-sent the Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges to all three addresses and also notified Respondent that the prehearing conference date was rescheduled to November 29, 2004. All three mailings were returned to the Department.

2. On November 29, 2004, Respondent failed to appear at the prehearing conference, or to notify the Department or the Administrative Law Judge that he was unable to appear.

3. The Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges informed Respondent that if he failed to appear at the prehearing conference the allegations against him, set forth in the Notice, could be taken as true, and a default order could be issued.

4. Because Respondent failed to appear, he is in default.

5. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges are taken as true and incorporated into these Findings of Fact.

6. Respondent caused injury or harm to the public.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department of Commerce and the Administrative Law Judge have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50 and 326.91.
2. The Department has given proper notice of the prehearing conference in this matter and has fulfilled all relevant substantive and procedural requirements of law and rule.
3. Respondent, having made no appearance at the prehearing conference and not requesting any continuance or relief, is in default. Pursuant to Minn. R. 1400.6000, the allegations contained in the Notice of and Order for Hearing, Notice of Prehearing Conference, and Statement of Charges are hereby taken as true.
4. Pursuant to Minn. Stat. § 326.91, subd. 1, the Commissioner may by order deny, suspend, or revoke any license or may censure a licensee, and may impose a civil penalty as provided for in Minn. Stat. § 45.027, subd. 6, if the Commissioner finds that the order is in the public interest, and that the licensee or qualifying person has acted in violation of any of the fourteen subitems in Minn. Stat. § 326.91, subd. 1.
5. Respondent breached a contract so as to cause injury or harm to the public in violation of Minn. Stat. § 326.91, subd. 1(4), by failing to deliver and install a storm door on James Hunter's home, despite receiving full payment and stating in writing that it would be installed within 6-7 weeks.
6. Respondent failed to provide the Department with written notice of changes to his home and business addresses within 15 days, in violation of Minn. Stat. §§ 326.875, and 326.91, subd. 1(5).
7. Respondent has shown himself to be incompetent, untrustworthy and financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6), by repeatedly misrepresenting to Mr. Hunter that the storm door would be delivered and installed or that his money would be refunded.
8. Respondent violated Minn. Stat. § 45.027, subd. 1(a), by failing to appear as ordered before the Commissioner's representative on June 27, 2004, and July 7, 2004.
9. Respondent's conduct constitutes grounds for the Department to take disciplinary action under Minn. Stat. §§ 326.91, subd. 1, and 45.027, subds. 6 and 7.
10. Disciplinary action is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner take disciplinary action against Respondent.

Dated: December 10, 2004

s/Steve M. Mihalchick
STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Default